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To: Microsoft ATR
Date: 1/25/02 9:41am
Subject: Microsoft Settlement

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To: microsoft.atr@usdoj.gov
Subject: Microsoft Settlement

To: Renata B. Hesse
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Under the Tunney Act, we wish to comment on the proposed Microsoft settlement.

In my experience, the judgment does not address one of the most critical issues Microsoft causes through their practices. The administration of the EULA for MS Windows 95 and Windows 98 attempts to obsolete millions of perfectly good computers by preventing the use of MS Windows products **EVENTHOUGH THESE PRODUCTS HAVE BEEN PAID FOR**. The effect on schools, non profits and the poor, not to mention the environment, is devastating.

For the past several years, since my retirement from the computer industry, I have run computer reuse facilities that refurbish and place computers in the Oakland Public Schools. We (several business partners, the School District, hundreds of student workers and more hundreds of volunteers have placed over 5000 computers in classrooms and labs and over 2500 in student homes.

We run a very low overhead operation with donated equipment, warehouse space and labor.

I have pasted the quotes from Microsoft webpages below on "Guidelines for Accepting Donated COmputers" and would like to comment on them in context.

You can see them at the following website.

<http://www.microsoft.com/education/?ID=DonatedComputers>

I have also pasted an apparent internal MS memo with further guidelines.

Our main expense has always been the purchase of Microsoft products. Often this must be done **WHERE THERE WAS LIKELY A PRODUCT** (Windows 95 or 98) already purchased. Most companies don't keep the license with the computer. Most

companies that I have worked with purchased their computers from vendors that preinstalled the software (Dell, Compaq, IBM, Toshiba, etc.). It is my experience that most Pentium level computers CAME WITH WINDOWS originally. If I read the antitrust case correctly, OEMs were REQUIRED to install Windows if they wanted to maintain their relationships with Microsoft. If this is indeed the case, THE PRESUMPTION SHOULD BE THAT THE OPERATING SYSTEM IS INCLUDED EVEN IF YOU CANNOT FIND THE DOCUMENTATION. Microsoft could have made this very easy. They could have said "If you receive a computer from one of the following vendors (include a list such as the above) and it is a P75 or greater, you can assume that it came with Windows 95. If it is a PII 266 or greater, assume Windows 98. See Microsoft's answer to question #1 below. If there is a legal requirement that the software remain with the hardware, you shouldn't need any special documentation of the license to make it legal.

I have worked with Compaq Services and they can tell me exactly what software was originally installed. Through them, I can prove that W95 or W98 was purchased from Microsoft. This is not, according to MS, sufficient. They would like an additional, secon purchase.

In any case, because of the risk of Microsoft either coming after me/you for software piracy or the desire not to make Microsoft mad because they might give me/you something in the future, most recyclers want to lay low and not take MS on.

This is because we want to best help our clients/customers and we know that they will be using MS products in the workplace, school, libraries, etc and want to get them what is most useful.

In any case, in order to stay completely legal, our organization has used our scarce resources to buy MS products when we were pretty sure that they had already been purchased for these machines.

This is appalling.

What is more appalling is the lack of an aftermarket for MS products. You'd think, 5 or 6 years after it came out, that you could buy a copy of Win95 for \$5 or \$10. It would be great if you could buy it from MS, BUT THEY ONLY SELL THE CURRENT STUFF THAT WON'T run on the older machines. They will sometimes graciously tell you that if you buy a current version (what does XP cost, \$149?), you can run a prior

version, but I haven't seen this on their web site.

If you go to a local computer show, you can find Win95 for \$10, but MS says it is not legal. They have been going after resellers on Ebay, lately.

Why is MS so afraid of their older products? The reason is that the emperor has no clothes. The product hasn't actually gotten any better to do the things that I want. Windows XP has absolutely nothing that I need that I can't get in Windows 95 or 98 with a few free addons from the Internet (Realplayer, Netscape, etc., etc., etc.).

MS wants an all XP world. But what would such a thing do to the world? It would make millions of computers obsolete and headed for landfill. Do you realize how few older computers can run XP?

What should MS really do if they wanted to help with the digital divide issue? Very simple. Make Window 95 or 98 free to non-profits (as so many other companies have done with their products). We could use it for schools, community centers and on computers that we send to homes of people that don't have computers. I actually think this would help MS in the long run (which I don't mind) and it would sure give millions access that don't have access today.

Reviewing the second document from Microsoft (below) makes me understand why MS is finally interested in this issue (besides ridding themselves of the class action lawsuit). The MS marketing folks are spending a lot of time telling their (angry) corporate customers why it is so hard to donate their excess equipment to the public schools and other non-profits. It has nothing to do with trying to bridge the digital divide. MS doesn't have that much good will.

The settlement proposal is the crudest, most transparent attempt I've seen for MS to TRY to look like a good corporate citizen when they have been responsible for the problem from the outset.

The following in quotes comes from MS website with comments by me (in CAPS, not in quotes.)
<http://www.microsoft.com/education/?ID=DonatedComputers>

"A Guide to Accepting Donated Computers for Your School

"The decision to accept or decline an offer of donated computers for your school can be complicated. There are many important questions to ask, including:

Will the computer run the software that your school currently uses?"

USUALLY YES, UNLESS MS HAS SOLD THE SCHOOL DISTRICT A BILL OF GOODS TO TRY TO GO TO ALL XP.

"What is the cost of integrating the hardware into your existing networks?"

USUALLY IT IS CHEAPER TO INTEGRATE A RECYCLED COMPUTER THAN A NEW ONE. YOU NEED A LESS EXPENSIVE LOCKDOWN DEVICE. YOU CAN PROVIDE SPARES. MOST OF THE COMPUTERS INSTALLED ARE LIKELY THE CLASS OF THE RECYCLED ONES. A MORE INTERESTING QUESTION IS WHAT IS THE REAL COST OF REPLACING YOU EXISTING COMPUTERS WITH NEW ONES.

"Will your teachers or students need additional training to use the computer?"

USUALLY, NO. THEY WILL NEED IT, HOWEVER, IF THE SCHOOL DISTRICT MAKES THE MISTAKE OF GOING TO XP TOO EARLY.

"To help you in your decision-making process, we encourage you to read the article Donating used Computers to Schools: Boom or Bust?

If you feel it is in the best interest of your school to accept the donated PCs, make sure that the hardware donation includes the original operating system software. Keeping the operating system with the PC is not just a great benefit - it is a legal requirement."

IF IT IS A LEGAL REQUIREMENT, SHOULDN'T IT BE ON MICROSOFT TO PROVE THAT A COPY WASN'T PURCHASED (USING THE GUIDELINES MENTIONED ABOVE), ESPECIALLY IF IT WAS A NAME BRAND COMPUTER?

Questions and Answers

Q. Why should a donor include the operating system with their PC donation?

A. It is a legal requirement that pre-installed operating systems remain with a machine for the life of the machine. If a company or individual donates a machine to your school, it must be donated with the operating system that was installed on the PC.

THEREFORE, WE CAN ASSUME THAT ANY COMPUTER THAT ORIGINALLY HAD MS SOFTWARE STILL HAS IT. EVEN WITHOUT THE DOCUMENTATION.

Q. What does the donor need to do to donate a PC with the operating system? A. PC owners have to transfer their license rights to the operating system to your school along with the PC. They may do so as specified in their End-User License Agreement (received at the time of purchase) as part of a permanent sale or transfer of the PC.

FOLLOWING QUESTION 1, THEY DON'T REALLY HAVE AN OPTION. IT MUST GO WITH THE COMPUTER. WHY REQUIRE LOTS OF ADDITIONAL (HARD TO FIND) DOCUMENTATION?

Q. How does the PC owner transfer their license rights for the operating system? A. The following should be included with the donation of the PC.

All copies of the software on original disk or CD, including back-up and/or recovery materials

Manuals and printed materials

End-User License Agreement

Certificate(s) of Authenticity

YOU'VE GOT TO BE KIDDING.

Q. What if the donor can't find the backup CDs, End-Use License Agreement, End-User manual and the Certificate of Authenticity? Can they still donate the PC and operating system?

A. Microsoft recommends that educational institutions only accept computer donations that are accompanied by proper operating system documentation. If the donor cannot provide this documentation, it is recommended that you decline the donated PC(s).

WHAT DOES MICROSOFT RECOMMEND BE DONE WITH THIS PC? SHOULD IT GO TO LANDFILL? WHAT A SHAME WHEN IT IS SO USABLE AND THERE IS SUCH A NEED? INTERESTING THAT MS DOESN'T SUGGEST THE SCHOOL FIND AN APPROPRIATE OPERATING SYSTEM. TOO BAD THEY DON'T SAY, "IF THIS COMPUTER ORIGINALLY CAME WITH A MS OPERATING SYSTEM...SEE ABOVE LIST...IT CAN BE RELOADED WITH THE EQUIVALENT...BECAUSE MS HAS ALREADY BEEN PAID FOR IT.

THE ARROGANCE. DECLINE THE DONATED PCS? HOW ABOUT GIVING THEM TO ME AND I'LL PUT NEWDEAL ON THEM AND GIVE THEM TO FAMILIES. I MIGHT PUT A STICKER ON IT THAT SAYS THAT "THIS COMPUTER ORIGINALLY CAME WITH A MICROSOFT OPERATING SYSTEM, BUT, SINCE WE CAN'T FIND THE ORIGINAL CD, YOU'RE JUST OUT OF LUCK...ASK AROUND, PERHAPS A FRIEND OF YOURS HAS THE ORIGINAL CD AND YOU CAN LOAD IT (IF YOU HAVE ALL THE REST OF

THE DOCUMENTATION."

Q. Can I upgrade the operating system on a donated machine?

A. Yes, once the machine and installed operating system is transferred to your school or institution you own the PC and the licensed software. You can upgrade via Microsoft Academic Licensing Programs: Microsoft School Agreement Subscription, Microsoft Campus Agreement Subscription, Microsoft Academic Open or Microsoft Academic Select. Contact your preferred Microsoft Authorized Education Reseller for details.

THE OTHER ANSWER IS THAT IF THIS IS SPECIFICALLY FOR A SCHOOL, YOU CAN OFTEN BUY A LICENSE FOR AN OLDER OPERATING SYSTEM AT A REDUCED PRICE USING SCHOOL PRICING. THE PRICE FOR OFFICE 98 LICENSE (NO MEDIA) IS SLIGHTLY UNDER \$50 AT THE CURRENT TIME. I'M NOT SURE, BUT I THINK MS IS TRYING TO STOP DOING THIS WITH THE NEW XP LICENSING NONSENSE.

Following is an apparently MS Internal document dealing with this issue. Again I have added comments in CAPS.

<<Donated PCs and the Transfer of the MS OS.doc>>

<<DONATED PCs OEM QA.doc>>

Please feel free to forward any of these documents to the agencies that are donating the community centers computers w/out an OS.

Best regards,

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Empowering people through great software anytime, anyplace,
and on any device.

LETTER STARTS HERE

Donated PCs and the Transfer of the Microsoft Operating
System

Background for 9/6/00 Conference Call

Background: Donations of used or outdated machines by businesses and government organizations to K-12 schools and charities worldwide is increasing. Today, 10% of all newly acquired PCs going into K-12 are donated, approx 250,000 machines. (This number is forecasted to grow significantly over the next few years.) Many times these PCs arrive without an operating system, or if the OS is included, without the legal documentation or proof of license for the OS. Schools and charities that receive these machines are not able to purchase a bootable desktop operating system from Microsoft and there hasn't been clear communication around our policy, a systematic process, or self-serve set of tools for transferring licenses with donated hardware. This has resulted in customer satisfaction issues for the schools and charities receiving the equipment and the organizations (many being our enterprise customers) making the donations. As a result, most of our reps are spending cycles on this issue with their customers.

SO MICROSOFT IS INTERESTED BECAUSE OF "CUSTOMER SATISFACTION ISSUES". ANGRY CUSTOMERS THAT CAN'T DONATE THEIR SURPLUS EQUIPMENT TO THE SCHOOLS.

Long Term Solution: Microsoft does not endorse the use of second-hand hardware in schools; in fact we actively position the benefits of using the latest hardware and software technology to schools, teachers and students. However, PC donations continue to grow and requests to Microsoft have increased over the past 12 months to the point where a solution is required to minimize field overhead and better satisfy customers. Because education customers represent such a large percentage of the entities receiving recycled PC's the education group has led a cross-company effort to implement solution.

THERE ARE NO BENEFITS. JUST COSTS.

First, a website has been created to serve as the primary source of information for all Microsoft customers concerning the issues of donating and receiving recycled pc's with Microsoft software. The website is designed to educate and inform all parties involved with donated machines, from the

businesses and governments making the donations to the schools and charities who are receiving them. Most importantly the web site will clarify how to donate a machine to a school or non-profit organization. This will include clear messaging of the legal requirement that the original OS stay with the machine and that naked machines should not be accepted. It will also provide a downloadable legal document acting as proof of ownership for those organizations donating machines, but unable to locate the EULA, COA, and back-up discs required when transferring the OS. With this the school or charity will have legal proof in the form of a document signed by the donating organization that they are licensed for the OS.

In addition, the web site will provide a simplified process for donating Select, Enterprise Agreement, and Open licenses to a school or non-profit. To support this, the website includes a simple online license transfer tool that requires the donating organization to enter all pertinent data from their volume license agreement. After entering the required and validated data the business will be given access to the legal document that grants transfer rights to another entity. Microsoft will have access to and track the information about the licenses being transferred by each account. This process automation will reduce field, customer, and business-desk time and enable our volume license customers to transfer licenses with donated equipment in a simple and secure way.

However, after spending several months developing a solution it became evident that ownership of the policy and process needs to reside in WW Licensing. They have agreed to add this to the plate of the new K12/HEd license person when they are hired, but this will be low on the priority list given all the other immediate needs.

Proposed Short Term Solution: Given the growing customer satisfaction issues and the time the reps are investing in this issue, I believe that we need to put a short term

solution in place that consists of more than Jane, Andrea and I fielding customer and rep questions and communicating that a website should be available shortly (we've been saying this for 6 months.) Therefore I am proposing that we launch the PC recycling website so that there is a place to point customers for information upon request. We will not proactively market the website. In addition, there will be no one fielding questions around the site -- the reps will need to do this with help from us as needed.

Pros:

- Reps/telesales have a place to direct customers
- Allows us to capture customer data from those donating PCs and transferring the OS licenses that can be audited later

Cons:

- Any questions that arise around the site will need to be fielded by the reps of field. There will not be an alias where customers can send questions.
- The website could be changed/pull down once WW licensing takes ownership of the policy

Timeline: The website described above is near completion -- it requires some revisions to the content and database prior to being propped. It is estimated that the changes will take about 4 to 6 hours by a web developer.

Website: You can view the contents of the website on the test server at:

<http://internet-build2/giving/dpcs.htm>

Here is link to the database without the required changes (problem with a couple of fields - state/province and license# with OEM product.):

<http://fasteddy/education/license/pcrecycle/default.asp>

Once a customer has inputted the required information, they will have access to the appropriate transfer letters.

OEM Licensing Q&A

Q. I just received a (new or used) PC with Windows installed on it. How can I tell whether my PC is legally licensed?

ANSWER: To ensure you are getting genuine Microsoft software with your PC purchase, you should first look for the Certificate of Authenticity (COA) Label affixed to you PC. <http://www.microsoft.com/piracy/howtotell/how/coa.asp>

THIS DIDN'T START UNTIL WINDOWS 98 SECOND EDITION AND WASN'T APPLIED UNIFORMLY MY BUSINESSES DUE TO LAG TIMES WITH MICROSOFT.

Q. I got my new system with a COA but w/o a MS CD, is it

still legal?

ANSWER: Depending on your source for software you may or may NOT have an Edge-to-Edge CD included with your PC. Please check this web site for further clarification.

<http://www.microsoft.com/piracy/howtotell/how/coa.asp>

Q. Some of my PCs are not licensed for Windows full OS. How do I get a legally licensed OS for my PCs?

ANSWER: Contact your local OEM/SB who can sell you OS bundled with computer hardware for your existing PCs.

Q. Is it illegal to purchase a naked PC?

INTERESTING USE OF TERMS TO DESCRIBE MILLIONS OF PCS EVERY YEAR.

ANSWER: It's not illegal. However, you may end up paying more for your OS if one was not pre-installed by the System Builder. If you do not have an OS pre-installed you have only two options to obtain a full OS:

Purchase an OEM license with additional hardware from your OEM/System Builder
Buy the FULL-PACKAGED PRODUCT from a retail store

It is important to note that all new machines should come with a bootable operating system pre-installed (i.e., MS-DOS with Windows 3.11, OS/2, etc.). For example, a customer who has an OEM version of MS-DOS 6.22 and Windows 3.11 pre-installed on a new machine is eligible to acquire a Windows 98 Version Upgrade or enroll in Windows Upgrade Advantage or he/she may acquire a Windows 2000 Pro Competitive Upgrade. The Select 5.0, Select 4.0, Select 3.0 and Open License programs only offer upgrade licenses, so the customer cannot acquire a "naked" PC and install a full operating system license under any Microsoft volume licensing program.

Q. Does volume licensing include a full Microsoft Operating

System (OS)?

ANSWER: No. Microsoft Volume licensing only licenses you for the OS upgrade and sometimes downgrade. There are only three ways to obtain a FULL OPERATING SYSTEM:

1. Buy the FULL-PACKAGED PRODUCT from a retail store
2. Purchase a PC with an OEM version of the operating system preinstalled, or
3. Purchase an OEM license with additional hardware from your OEM/System Builder.

All other licensing programs from Microsoft offer only upgrade licenses for operating systems. If the customer does not have a full operating system license under those upgrades, they are not fully licensed and are not compliant.

Q. If I accept donated computers, what do they need to come with?

ANSWER: If your organization accepts donated computers; make sure that the hardware donation includes the original operating system software. Keeping the operating system with the PC is not just a great benefit - it's a legal requirement

http://www.microsoft.com/giving/dpcs_old.htm

<http://www.microsoft.com/education/license/pcrecycle/>

Q. What if I have already received a donated machine without an operating system and no proof of a legal operating system license?

ANSWER: You have three options

Request a proof of license from the organization that donated the machine. Once you receive their documentation confirming legal proof of license, you may install the operating system for which you are licensed.

Return the donated machine to its original owner and request they reinstall the operating system.

Visit www.microsoft.com/oem/ to learn more about how you can participate in Microsoft's System Builder Program.

Q. What if the donor can't find the backup CDs, End-User License Agreement, end-user manual and the COA? Can they still donate the PC and operating system?

ANSWER: Yes, but the donor needs to sign a letter stating they are unable to find the original paperwork and software. Here is a sample proof of license letter that is available to download. The organization's information needs to be filled in and included with the donated machines. This letter will serve as proof of license for the school or nonprofit.

Q. Can I transfer my operating system license from an old PC to a new one?

ANSWER: No. Current OEM licenses for all operating system products are not transferable from one machine to another.

For more information: \\cpitgdfs15\USSALES\Public\Anti-Piracy\Channel\OEM\LICENSINGQA.doc

Q. If I bought a new PC that has Windows 2000 Professional installed, am I allowed to down grade to Windows NT Workstation?

ANSWER: Not under your OEM License. However some Microsoft volume license agreements allow you to downgrade. Visit www.microsoft.com/licensing for more information.

Q. If I bought a PC that has both Windows ME and Windows NT Workstation installed, does that mean I'm licensed for both?

ANSWER: No. The EULA dictates what a customer can do with their software after they receive it preinstalled on their PC. For example: The EULA for Win 2K Pro states:

The manufacturer may have elected to provide you with a selection of Microsoft operating system software for the COMPUTER. If the SOFTWARE PRODUCT includes more than one (1) Microsoft operating system ("Microsoft OS"), you are licensed to use only one of the Microsoft OS selections provided. As part of the setup process for the SOFTWARE you

will be given a one-time option to select one (1) Microsoft OS. Upon selection, the one Microsoft OS selected by you will be set up on the COMPUTER, and the other Microsoft OS(s) not selected by you will be automatically and permanently deleted from the hard disk of the COMPUTER.

Other sites:

<http://www.microsoft.com/education/license/pcrecycle/>

http://www.microsoft.com/giving/dpcs_old.htm

http://www.microsoft.com/business/downloads/licensing/OS_License_requirements.doc

The bottom line is, through MS predatory licensing practices, millions and millions of computers are rendered "obsolete" by Microsoft every year. These computers are perfectly good for schools, non-profits, and millions of people on the other side of the digital divide. Microsoft is doing everything in their power to get rid of older computers. Their practices virtually eliminate an aftermarket.

Thank you for your consideration.

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